

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

Re: **People of MI v Dale A Geno**  
Docket No. **278886**  
L.C. No. **01-046631-FC**

E. Thomas Fitzgerald, Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction because the defendant cannot appeal the denial or rejection of a successive motion for relief from judgment. See MCR 6.502(G)(1). The trial court found that defendant did not satisfy the standard of MCR 6.502(G)(2) and this Court agrees. The Court would note that in terms of the four-prong test the defendant must show that even with due diligence he could not have brought this claimed new evidence prior to filing his motion for relief from judgment in 2005. Nothing suggests that defendant made any effort to see if the victim's father had made statements to his coworkers and even now there is no affidavit from the coworker who allegedly heard a statement from the father, but instead an affidavit from defendant's dad who is passing on second hand information. Finally, the trial court with good reason found that this would not have changed the verdict when the testimony of Darcy Komejan, Emilio Trejo, and others are considered.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 20 2007  
Date

*Sandra Schultz Mengel*  
Chief Clerk